

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

NATHAN A. GRAHAM,

Petitioner,

VS.

MARGARET BRADSHAW,

Respondent.

CASE NO. 3:05-cv-0159

OPINION & ORDER
[Resolving Doc. 30].

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In its April 18, 2008 opinion and order, the Court considered a petition, filed pursuant to [28 U.S.C. § 2254](#), arguing that a Petitioner's previous conviction used to enhance his sentence was unconstitutional. The Court found that the actual innocence exception, which may apply to give the Court jurisdiction over enhanced sentences, did not apply to the Petitioner and therefore the Court did not have jurisdiction to review his claim. *See Lackawanna County Dist. Att'y. v. Coss*, 532 U.S. 394, 405 (2001) (plurality opinion); [Doc. [28](#)]. The Court noted that the Petitioner had pled guilty pursuant to a plea agreement and Ohio had dismissed a charge of receiving stolen property charge. [Doc. [28](#)] Thus, the Petitioner had to make a showing of actual innocence on that charge. *Bousley v. United States*, 523 U.S. 614, 624 (1998). The Petitioner failed to make any such showing, and the Court concluded it was without jurisdiction to hear his petition. [Doc. [28](#)]

For the reasons stated above, the Court certifies pursuant to [28 U.S.C. §1915\(a\)](#) that an appeal from this decision could not be taken in good faith and no basis exists upon which to issue a

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certificate of appealability. [28 U.S.C. §2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).

IT IS SO ORDERED.

Dated: May 27, 2008

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE